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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1935.

No. 247

EDWARD T. BLAIR,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SEVENTH CIRCUIT.

PETITION FOR WRIT OF CERTIORARI.

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SEVENTH CIRCUIT.

To the Honorable Judges of the Supreme Court of the United States:

The petition of Edward T. Blair respectfully shows:

Opinions Below.

The opinion of the Board of Tax Appeals in the present case (R. 91 to 108) is reported in 31 B. T. A. 1192. The opinion of the United States Circuit Court of Appeals, for the Seventh Circuit, reversing the Board of Tax Appeals (R. 125) is reported in 83 Fed. (2) 655.

Jurisdiction.

Judgment of the United States Circuit Court of Appeals was rendered on the 11th of April, 1936 (R. 125-138). A petition for rehearing duly filed was denied on May 27, 1936 (R. 139).

Jurisdiction of the court is invoked under Section 240 (a) of the Judicial Code as amended by an Act of February 13, 1925.

The Question Presented.

There is here involved a matter of individual income taxes for the taxable years 1924, 1925, 1926 and 1929. The question presented is whether income paid from a trust estate to assignees under assignments made by a life beneficiary of the trust estate, and held valid by the courts of the State of Illinois having jurisdiction over the matter, should be taxed to the original beneficiary, the assignor, despite the assignments and the actual payment of the income to the assignees.

The Statutes Involved.

The statutes involved impose an income tax upon the income of individuals. So far as the question here presented is concerned there is no material difference between the various statutes in force during the respective tax years. The pertinent provisions of the 1924 statute are to be found in the appendix attached hereto.

Specification of Errors to Be Urged.

The Court below erred

1. In reversing the decision of the United States Board of Tax Appeals.

2. In holding that the income in question paid from the trust estate created under the will of William Blair to the assignees named in the assignments in question was the income of the taxpayer, and therefore taxable to him.

STATEMENT.

The facts were stipulated (R. 28) and as so stipulated were included in the findings of fact entered by the Board of Tax Appeals (R. 94).

We summarize them as follows:

William Blair, father of the petitioner, died in 1899 (R. 28) leaving a last will, whereby he created a trust for the benefit of his wife and son, Edward T. Blair. They were to be paid certain proportions of the income during their respective lives (R. 32, 35, 36, 28). Upon the death of Mrs. William Blair the entire income was to be paid to Edward Blair.

The trust was to continue during the lives of the wife and son, and at the death of the survivor (subject to limitations not here important) the principal of the trust was to pass to Edward Blair's children (R. 37).

Mrs. Blair died in March, 1923, and Edward Blair became the sole life beneficiary and entitled to all of the income (R. 28). He immediately, within a few days, made the first of the assignments in question of portions of his interest to his children (Petitioner's Exhibits 2, 3 and 4; R. 42 and 43). Following these he made others (Ex. 5-11, R. 45-51). The assignments were all in writing and were in the form of written contracts between Mr. Blair and his children respectively. The children were all adults, and were the same who would be entitled to the principal at his death. No contention has ever been made that in fact these contracts of assignment were made to meet any obligation of Mr. Blair towards his children such as was the purpose of the assignments in the cases of *Helvering* v. *Schweitzer*, 296 U. S. 551; *Helvering* v. *Stokes*, 296 U. S. 551, and *Douglas* v. *Willcuts*, 296 U. S. 1.

The assignments were accepted by the trustees as valid, and the income so assigned was in fact paid to the assignees respectively. They in turn duly reported such income in their respective income tax returns and paid the taxes on the income (R. 29, 30).

The Commissioner held, however, that the assignments, being merely of a life interest in the income of a trust, did not transfer a present interest in property or property rights, but constituted merely an assignment of future income if and as earned; that therefore the income was to be regarded as belonging to the taxpayer, Edward Blair, and not to the assignees; and accordingly was taxable to him.

This question first came up as to the tax year 1923 (not here involved) with reference to assignments to three of the children, the fourth assignment not having then been made.

Edward Blair appealed to the Board of Tax Appeals, which held that the assignments were valid and constituted transfers of a present property interest, and that the income thereby produced was not taxable to him (18 B. T. A. 69).

The Commissioner appealed that decision to the Circuit Court of Appeals, for the Seventh Circuit. There the principal question discussed was as to the *validity* of the assignments. The contention of the Commissioner was that the trust, being spendthrift in nature, the life beneficiary, Edward Blair, did not have the power to make a valid assignment. This question both Edward Blair and the Commissioner agreed, and the court held, involved property rights, and was therefore to be determined by the law of the State of Illinois. Those property rights not having then been determined by any Illinois court, and there being no Illinois authority that squarely passed upon the ques-

tion, the Circuit Court of Appeals itself interpreted the related decisions of the courts of Illinois, and held that under those decisions, as so interpreted, the particular language of the will established a spendthrift trust and deprived Edward Blair of any power to make a valid assignment. Hence it decided that the assignments were invalid, transferred no interest whatsoever, and that therefore the income was taxable to Edward Blair (60 Fed. (2) 340).

The petition to this court for writ of certiorari having been denied (288 U. S. 602), the question as to that particular tax year 1923 became a final adjudication and the tax was paid.

However, the trustees and assignees, not having been parties to that case in which their property rights under the assignments had been collaterally passed upon, were left in a position of doubt. The question as to them was still open whether or not the assignments were valid under the law of Illinois, and to whom the trustees should pay the income.

Accordingly the trustees, to secure a judgment binding on all parties on this important issue, thereupon filed in the Superior Court of Cook County a bill in chancery, asking for a construction of the provisions of the will creating the trust, and for a specific determination of the question whether the assignments were valid under the law of Illinois (R. 57 to 59, particularly paragraphs 12 and 12 (d) of the bill).

In this bill the entire matter was laid before the Superior Court of Cook County, including the question as it had been presented in the Circuit Court of Appeals, the judgment of that court that the assignments were invalid, and the court's opinion, together with a reference to the authorities relied upon by the court (R. 59, 60). The bill pointed out the

dilemma of the trustees, namely, that they did not know whether to regard the assignments as valid or not, and needed to have an authoritative judgment on that point (R. 60, par. 12 (h), 13, etc. of the bill).

Answers were filed by the assignees asserting the validity of the assignments (R. 74). On the hearing which followed, the State Court decreed that under the law of Illinois the assignments were beyond the power of Edward Blair to make, and were invalid (R. 75).

The assignees appealed to the Appellate Court of Illinois, where the matter was fully presented in briefs filed and oral argument. The position of the trustees was that the decree should be affirmed, relying particularly upon the same Illinois authorities upon which the Circuit Court of Appeals in *Commissioner* v. *Blair*, 60 Fed. (2) 340, had relied, and also upon the opinion of the Circuit Court of Appeals interpreting those authorities. (See findings of fact, R. 100.)

The Appellate Court of Illinois in a written opinion thoroughly reviewing all the Illinois decisions, and also the decision of the Circuit Court of Appeals in *Commissioner* v. *Blair*, 60 Fed. (2) 340, held, one of the three judges dissenting, that under the law of Illinois, with all due deference to the decision of the Circuit Court of Appeals, there was no restraint on a voluntary alienation of his interest by Mr. Blair, and that therefore the assignments were valid. Accordingly it reversed and remanded the case to the Superior Court of Cook County, with directions to enter a decree consistent with the opinion. (R. 79, also 274 Illinois Appellate 23.)

Thereupon the Superior Court in accordance with the opinion of the Appellate Court, entered its decree that the assignments were valid and constituted voluntary assignments of "a part of the interest of Edward Tyler Blair in said trust estate." (R. 88, 90, par. 12.)

At the time of the entry of this decree the cases involving the tax years here in question were pending before the Board of Tax Appeals, and had been consolidated. The entire record of the Illinois case was introduced in evidence before the Board, including the bill of complaint, answers, decree, opinion of the Appellate Court of Illinois, and final decree of the Superior Court (R. 52-91).

Thereupon the Board of Tax Appeals entered its findings of fact (R. 91) and opinion (R. 102) holding that the decree of the Illinois court constituted the law governing the property rights of the parties; and that the income tax question was to be determined in view of that adjudication, (citing *Freuler* v. *Helvering,* 291 U. S. 35); that the assignments therefore were valid; that they constituted transfers of a present property interest in the trust estate; and that therefore the income payable, and in fact paid to the assignees on account of the assigned interest was not to be taxed to the assignor, Edward Blair (R. 91), 31 B. T. A. 1192.

On appeal by the Commissioner to the Circuit Court of Appeals, for the Seventh Circuit, that court reversed the Board of Tax Appeals, and held that while the decree of the Superior Court was a binding adjudication of the property rights of the parties, the assignments as transfers of a life interest in the income of a trust were not transfers of present interests in property, but merely of a future right to income, and that therefore the income was taxable to Edward Blair. (Sup. Rec. 125) 83 Fed. (2) 655.

It is this decision of the Circuit Court of Appeals of which a review is prayed.

REASONS FOR GRANTING THE WRIT.

First. The instant decision of the Circuit Court of Appeals for the Seventh Circuit is in conflict with several cases in other Circuit Courts of Appeal.

That conflict, we assert, lies in this:

The decree of the Superior Court of Cook County adjudicated and established the interest of Edward Blair in the trust estate, and his right to assign that interest or any part of it.

The question, therefore, presented to the Circuit Court of Appeals was solely as to the effect, from an income tax standpoint, of an assignment of that interest.

That question did not depend upon or involve the construction of any language peculiar to the trust instrument.

The question involved solely a decision as to the exact nature of the interest that any life beneficiary of the income of a trust estate has in such an estate.

That question is not peculiar to this particular trust estate, but is common to all.

The decision of the Circuit Court of Appeals on that question in this case is that the life beneficiary in the income of a trust has not an interest in the property itself; that he has merely an interest separate and distinct from the corpus and limited to the income which accrues and is distributable from year to year; that the assignment of such an interest is merely a direction to pay future income when and as earned; that therefore such income in effect belongs to and is taxable to the assignor and not the assignee to whom it is paid.

Other decisions of Circuit Courts of other circuits hold the direct opposite on this proposition.

This basic conclusion of the Circuit Court of Appeals in this case is of such importance with reference to our assertion that the decision is in conflict specificaly with the decisions of other Circuits, and in conflict also with principles laid down by this court determining the rights of life beneficiaries in trust estates, that we deem it proper to set out that conclusion in full (R. 137):

> "The question is not one of the validity of the assignments but for the purpose of determining income tax liability it is one involving the date when the income became transferable. This question turns upon whether the assignor had such an interest in the corpus of the trust as to permit of its transfer or whether the assignor's interest was separate from the property and limited to the income which accrued from year to year.
>
> The latter seems to be the situation. The testator made an income provision for his son. It was in the trustees' hands beyond the reach of the son's creditors. The son could not create obligations enforceable against it. Upon the son's death the said income ceased. It passed to either his children or to the heirs of the testator or in part to the widow of the son, depending upon survivorship, etc. The income passed to them not by act of the son, but by the testamentary trust provision of the testator. The son's interest was therefore not in any way attached to the corpus of the estate that produced the income. The income was not even subject to his disposition until he received it. The attempted assignment to his children was in legal effect merely a direction to the trustees to pay to his children out of the income *due to him*, various specified amounts each year. It does not militate against the conclusion that the income was *his*, and was due to him. While he could authorize the trustees to deliver to another what was due to him, it was not deliverable until it was *his to dispose of.*"

This decision is in conflict with *Commissioner* v. *Field*, 42 Fed. (2) 820 (Second Circuit).

The life beneficiary, Field, assigned a portion of his interest in the income of the trust estate to his wife. The

Circuit Court of Appeals for the Second Circuit held that there was a valid transfer of the property interest, and the income was not taxable to the assignor Field (page 822):

> *"So far as we know, it is universally true that the law considers an equitable interest for life or for a term of years as present property, alienable like any other."* (Italics ours.)

The decision in the instant case attempts to distinguish the Field case on the ground that Field, if he lived long enough, might have an interest in the corpus. Such a contingent interest in the corpus does not add to or detract from the intrinsic quality of the interest in the income. The distinction is based on no fundamental difference, and is therefore unsound. No case has been found adopting it. It is also at variance with the holdings of this court determining the property rights of a life beneficiary in the income of a trust estate, hereinafter referred to.

The instant decision also is in conflict with *Lowery* v. *Helvering*, (Second Circuit) 70 Fed. (2). 713. By will a decedent left to his wife during the term of her life the possession, management and control and the rents and income of his property. At her death the remainder was to go to trustees in trust for his children. The wife assigned to her children the income to which she was entitled, but not the possession, management and control. The Commissioner, the Board of Tax Appeals affirming, taxed the income to the wife, the assignor. The Circuit Court of Appeals, applying the Field case, held that the assignment was a valid assignment of a property interest and the income was not taxable to the assignor. It is to be noted that the assignor had no interest in the corpus other than as trustee, and that the assignment did not convey that interest. So that even accepting the distinction referred to above the conflict between this decision and the instant decision is complete.

The instant decision also is in conflict with *Shanley* v. *Bowers*, 81 Fed. (2) 13 (Second Circuit). Here there was a trust created by will for the benefit of the testator's son. He was to receive a portion of the income and upon the death or remarriage of his mother one-half of the corpus. He assigned his entire interest in trust, stipulating that a portion of the income was to be paid to his wife, and that the balance of the income and eventually all of the principal was to be paid to his creditors. The court, applying the Field case, holds that the income so assigned was not to be taxed to the assignor, as it was a valid assignment of a property interest.

So that as long as this condition of conflict exists whenever a life beneficiary of the income of a trust makes an assignment of the income, or a portion of it, if he lives in the Second Circuit he pays no tax on the income; if he lives in the Seventh Circuit he must pay a tax.

The instant decision is also in conflict with the following decisions:

Nelson v. *Ferguson*, 56 Fed. (2) 121 (Third Circuit).

Assignment of profits under a contract for exploitation of a patent.

Hall v. *Burnet*, 54 Fed. (2) 443 (C. C. A. Dist. of Columbia).

Assignment of insurance agent's interest in insurance premiums. Certiorari denied, 285 U. S. 552.

Helvering v. *Seatree* (Ct. of A. D. C.), 72 Fed. (2) 67.

Assignment of interest in partnership.

Rose v. *Commissioner* (6th Circuit), 65 Fed. (2) 616.

Partnership assignment with consent of partners.

Tracy v. *Commissioner* (6th Cir.), 70 Fed. (2) 93.

Interest in a brokerage account.

Saenger v. *Commissioner* (5th Cir.), 69 Fed. (2) 631.
Swartz v. *Commissioner* (5th Cir.), 69 Fed. (2) 633.

Interest in contract to cut lumber assigned.

Second. The decision is in conflict with applicable local law of Illinois. The decree of the State court that these assignments assigned "a part of the interest of Blair in said trust estate" is the law of this case. *Freuler* v. *Helvering*, 291 U. S. 35. And the decision of the Circuit Court of Appeals is in conflict with it.

Third. The decision is in conflict with the applicable decisions of this court determining the exact property rights of a life beneficiary in a trust estate.

Brown v. *Fletcher*, 235 U. S. 589, holding an assignment by a life beneficiary of his interest was not merely an assignment of a chose in action, but was a transfer of an interest in property. This court said (pp. 597, 599):

> "The beneficiary here had an interest in and to the property that was more than a bare right and much more than a chose in action. For he had an admitted and recognized fixed right to the present enjoyment of the estate with a right to the corpus itself when he reached the age of fifty-five. His estate in the property thus in the possession of the Trustee, for his benefit, though defeasible, was alienable to the same extent as though in his own possession and passed by deed. * * * The instrument by virtue of which that alienation was evidenced,—whether called a deed, a bill of sale, or an assignment,—was not a chose in action payable to the assignee, but an evidence of the assignee's right, title and estate in and to property."

The reference in this quotation to the interest possessed by the assignor in the corpus was, of course, pertinent in

view of the fact that the assignment was of a portion of both his interest in the income and his possible interest in the view of the fact that the assignment was of a portion of both corpus. There was no question at issue as between the two.

McGuire v. *Trefry*, 253 U. S. 12.

Question of a state tax on income received by a life beneficiary from a trust, held properly taxable, and with reference to the beneficiary's right that (pp. 16, 17):

> "*It is this property right belonging to the beneficiary realized* in the shape of income, which is the subject matter of the tax under the statute of Massachusetts." (Italics ours.)

Senior v. *Braden*, 295 U. S. 422, holding a beneficiary of a trust certificate had an interest in land constituting the trust. Reaffirms *Brown* v. *Fletcher*. (See page 433, and also see discussion of Brown case, 17 Columbia Law Review, 269, 289.)

Irwin v. *Gavit*, 268 U. S. 161, holding that the interest of a life beneficiary in "the income to a fund ordinarily is treated by equity as creating an interest in the fund." (See page 167.)

Fourth. The decision is of an important question of federal law which has not been, but should be, settled by this court. This court has not had occasion to determine the question here involved with reference to assignments by beneficiaries of a trust or assignments of a similar nature. The only cases approaching it are *Lucas* v. *Earl*, 281 U. S. 111, *Poe* v. *Seaborn*, 282 U. S. 101, *Burnet* v. *Leininger*, 285 U. S. 136, and *Douglas* v. *Willcuts*, 296 U. S. 1. They do not touch this question, but leave it entirely undecided.

It is respectfully submitted that in view of the importance of this question in connection with the administration of this tax law it should be finally decided by this court.

Wherefore, it is respectfully submitted that the petition should be granted.

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APPENDIX.

Internal Revenue Act of 1924, 43 Stats. 253, Chap. 234 Mason's U. S. Code 1926, Vol. 2, p. 1875:

"SEC. 210. (a) In lieu of the tax imposed by section 210 of the Revenue Act of 1921, there shall be levied, collected, and paid for each taxable year upon the net income of every individual (except as provided in subdivision (b) of this section) a normal tax of 6 per centum of the amount of the net income in excess of the credits provided in section 216," (Here follows the rate for the normal tax, etc)

"SEC. 211. (a) In lieu of the tax imposed by section 211 of the Revenue Act of 1921, but in addition to the normal tax imposed by section 210 of this Act, there shall be levied, collected and paid for each taxable year upon the net income of every individual a surtax as follows:" (Here follows the surtax rates.)

"SEC. 212. (a) In the case of an individual the term 'net income' means the gross income as defined in section 213, less the deductions allowed by sections 214 and 206."

"SEC. 213. For the purposes of this title, except as otherwise provided in section 233—

(a) The term 'gross income' includes gains, profits, and income derived from salaries, wages, or compensation for personal service, * * * of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits, and income derived from any source whatever. * * *

(b) The term 'gross income' does not include the following items, which shall be exempt from taxation under this title: * * *

(3) The value of the property acquired by gift, be-

quest, devise, or descent (but the income from such property shall be included in gross income);"

The 1926 Act, Chap. 27, 44 Stats. 126, is practically the same, having the same paragraph numbers.

The Revenue Act of 1928, Chap. 852, 45 Stats. 795, is also practically the same in its provision, the sections being numbered 11, 12 and 22 respectively.